

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Thelma J. Smith,	:	
	:	Case No. 1:19-cv-1053
Plaintiff,	:	
	:	Judge Susan J. Dlott
v.	:	
	:	Order to File Documents
Fidelity Mortgage, Inc., <i>et al.</i> ,	:	
	:	
Defendants.	:	

Pending before the Court is Defendants' Motion to Deem Their Requests for Admission as Admitted and Motion for Summary Judgment (Doc. 32) filed on July 20, 2021. Plaintiff failed to respond to Defendants' Motion, and the deadline for timely responding has passed. This is not the first time that Plaintiff's counsel has failed to fulfill his duty to his client and the Court in this case. Plaintiff's counsel failed to participate in telephonic status conferences held by Magistrate Judge Karen L. Litkovitz on August 10, 2020 and September 11, 2020. He also failed to timely respond to Defendants' Motion to Dismiss for Lack of Prosecution filed on October 14, 2020. (Doc. 21.) He responded only after Magistrate Judge Litkovitz issued an Order to Show Cause. (Docs. 22, 25.) Later, upon a motion by Defendants, Magistrate Judge Litkovitz extended the discovery deadline in this case until May 26, 2021. (Docs. 30, 31.)

Defendants served their First Discovery Requests on May 13, 2021 to Plaintiff. (Doc. 32-1 at PageID 113.) Defendants assert that Plaintiff failed to respond to the First Discovery Requests, including to their Requests for Admission. (*Id.* at PageID 114.) Defendants argue, therefore, each Request for Admission should be deemed admitted. Defendants also move for summary judgment on the basis of the purported admissions pursuant to Federal Rule of Civil

Procedure 36. However, Defendants failed to file as an exhibit to their Motion the May 13 Email and Defendants' First Discovery Requests described in the Declaration of Kasey L. Bond. (Doc. 32-1 at PageID 113.) The Court cannot grant summary judgment to Defendants at this time on the basis of purported admissions that are not in the court record.

The Court intends to adjudicate the merits of this case with due haste. The Court **ORDERS** Defendants to file the May 13 Email and Defendants' First Discovery Requests no later than Friday, September 3, 2021. The Court also **ORDERS** Plaintiff to respond to Defendants' Motion to Deem Their Requests for Admission as Admitted and Motion for Summary Judgment no later than Friday, September 17, 2021. No further extensions of time to respond to motions will be granted to Plaintiff. If Plaintiff does not respond to Defendants' Motion to Deem Their Requests for Admission as Admitted and Motion for Summary Judgment by September 17, 2021, the Court anticipates that it will grant summary judgment to Defendants on the basis of the admitted facts.

IT IS SO ORDERED.

BY THE COURT:

S/Susan J. Dlott
Susan J. Dlott
United States District Judge